



# BULLETIN

## Legislative interim study resolutions

The following is a summary of the Nebraska Legislature's interim studies that relate to the workers' compensation system. The interim study resolutions may be accessed from the Unicameral's Web site (<http://www.unicam.state.ne.us>). If you are unable to access a resolution, please contact the court's Legal section.

### LR 107

**PURPOSE:** To study the Nebraska Workers' Compensation Act. The study shall entail an examination of the act as a whole and whether any provisions should be revised or updated. The examination shall include a study of the issues raised by workers' compensation legislation introduced in the legislative session ending on May 30, 2003. (Vrtiska)

### LR 109

**PURPOSE:** To study the administrative function of the Nebraska Workers' Compensation Court. The study shall include an examination of the court's judicial and administrative duties, the appropriate mechanism for enforcing the court's administrative functions, and other issues raised by LB 198 introduced in 2003. (Vrtiska)

### LR 110

**PURPOSE:** To study the issues surrounding Professional Employer Organizations and employee leasing companies. The

Nebraska Workers' Compensation Court  
State Capitol Building, Lincoln, NE 68509  
800-599-5155 or 402-471-6468  
<http://www.nol.org/workcomp/>



## Summary of legislative bills

The following is a summary of the bills passed during the last legislative session that relate to the workers' compensation system. Also included is a list of other bills passed by the Nebraska Legislature that pertain to the judiciary or state government. To obtain copies of any of these bills, please contact the court's Legal section. The bills also may be accessed from the Unicameral's Web site (<http://www.unicam.state.ne.us>).

### *Bills related to the workers' compensation system*

#### LB 210

- Agricultural Exemption
- General/Limited Partners Who Avoid Payment

SECTION 48-106 was amended to provide that the Workers' Compensation Act shall not apply to service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs only related employees. In addition, the act shall not apply to service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs *unrelated* employees unless the employer, during any calendar year, employs 10 or more unrelated, full-time employees, whether in one or more locations, on each working day for 13 calendar weeks, whether or not such weeks are consecutive. If an employer to whom the act applies subsequently employs fewer than 10 or more unrelated full-time employees, such employer must continue to provide coverage for a full calendar year after becoming exempt. If the employer elects to return to exempt status, a notice must be posted for employees stating that the employer will no longer carry workers' compensation insurance and the date such insurance will cease. In addition, agricultural operations that are exempt from the act must give all employees written notice at the time of hiring which states the employees will not be covered by the Workers' Compensation Act. Failure to provide the notice subjects the employer to liability under the act and inclusion of all unrelated employees under the act on the basis of failure to give such notice. (See Page 4 for more information.)

SEC. 48-125.01 was amended to provide that where an employer is a limited partnership or limited liability partnership, any general partner who knowingly

# Summary of legislative bills

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acts with intent to avoid payment under the Workers' Compensation Act shall be guilty of a Class I misdemeanor as well as jointly and severally liable with such limited partnership or limited liability partnership. Limited partners shall not be liable.

*Effective date, August 31, 2003*

## LB 332

### • Volunteer Firefighters/Emergency Personnel

SEC. 48-115 was amended to provide that volunteer firefighters and volunteer ambulance drivers and attendants and out-of-hospital emergency care providers shall be considered to have been acting in the course and scope of their employment *from the instant* such persons commence responding to a call to active duty. In addition, such volunteers shall be deemed employees until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first. Previous language stated that employment began when the volunteer was traveling from the place from which they were called to active duty.

*Effective date, May 1, 2003*

## LB 760

### • Court Holidays

SEC. 48-191 was amended to provide that if a filing deadline falls on a day the compensation court is closed by order of the Chief Justice of the Supreme Court, the filing deadline shall be the next following day which is not a Saturday, Sunday, or day on which the court is closed by order of the Chief Justice.

*Effective date, May 24, 2003*

## Bills related to the judiciary

### LB 255

#### • Uniform Mediation Act

This bill creates the Uniform Mediation Act, which provides additional statutory authority for the use of mediation as an alternative to legal proceedings for dispute resolution. The act defines terms involved in the mediation process and explains the duties of the participants. The act also creates a mediation privilege, which prevents mediation communications from being used as evidence in legal proceedings connected to the subject of mediation. Such privilege may preclude mediation communications from being used as evidence in civil and criminal trials, arbitrations, administrative hearings, and legislative proceedings. The act also requires the mediator to disclose potential conflicts of interest to a party to mediation. The mediator is also required to disclose his or her qualifications as a mediator.

*Effective date, August 31, 2003*

### LB 320

#### • Judges' Retirement

Beginning July 1, 2003, this bill increases the contribution rates under the Judges Retirement Act to 8 percent of compensation for future members until the maximum benefit under SEC. 24-710 has been earned. Upon reaching the maximum benefit, future members shall contribute 4 percent. In addition, a court filing fee directed to the Retirement Fund for Judges is increased from \$1.00 to \$5.00.

*Effective date, May 30, 2003*

## Bills related to state government

### LB 228

#### • Address Confidentiality Act

This bill creates a program through the Secretary of State's office that allows

victims of abuse to use a substitute address for public records. The act enables state and local agencies to respond to requests for public records without disclosing the location of the victim. A program participant may request that state and local agencies use the substitute address designated by the Secretary of State.

*Effective date, August 31, 2003*

## LB 424

### • Treasury Management Cash Fund

This bill creates a new Treasury Management Cash Fund to receive the proceeds of charges assessed against the income of certain funds invested by the Nebraska Investment Council. A pro rata share of the budget appropriated for the treasury management functions of the State Treasurer shall be charged to the income of each fund held in invested cash, and such charges shall be transferred to the Treasury Management Cash Fund. In addition, the bill provides that the Materiel Division Revolving Fund may charge assessments against state agencies, boards, and commissions for purchasing services provided by the division. Such assessments shall be adequate to cover actual and necessary expenses associated with providing the service.

*Operative date, July 1, 2003*

## LB 626

### • State Contracts — Bids for Services

This bill creates a process of selecting and bidding on service contracts entered into by the state. It establishes a standardized, open, and fair process of selecting contractual services and creates an accurate reporting of funds spent on the services. The bill requires additional accountability and efficient reporting methods for all expenditures on contractual services. Courts are specifically included under these provisions.

*Effective date, August 31, 2003*

# Insurance coverage requirements for employers under the Nebraska Workers' Compensation Act

The Nebraska Workers' Compensation Act applies to the State of Nebraska, to every governmental agency created by it, and to every employer in the state employing one or more employees in the regular trade, business, profession, or vocation of the employer. Thus, virtually all employees are covered by the workers' compensation law including employees of private industry, state and local government, part-time employees, minors, and employees of charitable organizations.

There are a few exceptions:

- (1) Federal employees, railroad employees, most volunteers, and independent contractors are not covered under the Nebraska Workers' Compensation Act.
- (2) Household domestic servants and some employees of agricultural operations are covered under the Nebraska Workers' Compensation Act only if the employer elects to provide worker's compensation insurance for them.

Effective Aug. 31, 2003, employers engaged in an agricultural operation are exempt from providing workers' compensation insurance coverage if they employ only related employees. Agricultural employers who employ unrelated employees are also exempt unless in a calendar year they employ 10 or more unrelated, full-time employees, on each working day for 13 calendar weeks (consecutive or not). The act applies to an employer 30 days after the 13th week. An employer exempt from the act may elect to provide workers' compensation coverage for its employees. Every exempt employer who does not elect to provide workers' compensation insurance coverage must give all employees written

notice at the time of hiring that they will not be covered by the act, that they will not be compensated under the act if they are injured on the job or suffer an occupational disease, and that they should plan accordingly. Failure to provide this notice subjects an employer to liability under the act for all unrelated employees.

- (3) Self-employed individuals, sole proprietors, partners, and limited liability company members who are actually engaged in the business on a substantially full-time basis may elect to be covered under the Nebraska Workers' Compensation Act. To elect coverage such a person must file a written election with the insurer from whom workers' compensation insurance coverage is obtained.
- (4) Executive officers of Nebraska corporations who own 25 percent or more of the corporation's common stock are not considered employees of the corporation under the Nebraska Workers' Compensation Act unless they elect to be covered. To elect coverage, a corporate officer must file such election in writing with the workers' compensation insurer and the corporate secretary (not with the court).

This became effective Jan. 1, 2003. Under the old law, all corporate executive officers were deemed employees of the corporation, but officers who owned 25 percent or more of the corporation's common stock could waive coverage by filing a written waiver with the compensation court and the corporate secretary. In contrast, under the new law, such corporate officers are not deemed employees unless they elect to be covered. The enacting legislation was silent as to whether the new

provisions apply to workers' compensation policies with an effective date before Jan. 1, 2003, and continuing in effect beyond that date. If your corporation has a workers' compensation policy that became effective before Jan. 1, 2003 and continues in effect, contact your insurance representative or attorney for guidance.

- (5) Executive officers of Nebraska non-profit corporations who receive annual compensation of \$1,000.00 or less from the corporation are not considered employees of the corporation under the Nebraska Workers' Compensation Act unless they elect to be covered. To elect coverage such officers must file a written election with the workers' compensation insurer and the corporate secretary (not with the court).

Employers who are covered by the Act but fail to provide workers' compensation insurance may be subject to a fine of up to \$1,000 per day without insurance, imprisonment for not more than one year, and enjoinder from doing business in Nebraska until insurance is obtained.

For more information, please call the court's toll-free information line at 800-599-5155 or 402-471-6468, or visit the court's Web site (<http://www.nol.org/workcomp/>).

## Statistical Report for Injury Years 1998–2002 on Web site

The Nebraska Workers' Compensation Court's *Statistical Report for Injury Years 1998–2002* is available in portable document format (pdf) on our Web site at <http://www.nol.org/workcomp/pubs/statisticalreport98-02.pdf>

## ***Nebraska Workers' Compensation Court Information Sheet:***

# **Agricultural Operations & Workers' Compensation in Nebraska**



## ***Nebraska workers' compensation insurance requirements for agricultural operations (effective August 31, 2003)***

### **When is workers' compensation insurance required?**

Under the Nebraska Workers' Compensation Act, employers engaged in an agricultural operation are required to provide workers' compensation insurance coverage for all unrelated employees if the employer employs **10 or more unrelated, full-time employees on each working day for 13 calendar weeks**, whether consecutive or not, during any calendar year. This includes employees at all locations of the agricultural operation. (A worksheet is attached to assist in tracking this information.) When an employer has met these requirements, workers' compensation insurance coverage must be obtained no later than 30 days after the end of the 13<sup>th</sup> calendar week.

### **What is an agricultural operation?**

Agricultural operation is defined as the cultivation of land for the production of agricultural crops, fruit, or other horticultural products; or the ownership, keeping, or feeding of animals for the production of livestock products.

### **What is a full-time employee?**

Full-time employee is defined as a person who is employed to work one-half or more of the regularly scheduled hours during each pay period.

### **What about relatives?**

The Act does not apply to agricultural operations that employ **only** related employees. Related employee is defined as a spouse of an employer and an employee related to the employer within the third degree by blood or marriage. This includes parents, grandparents, great grandparents, children, grandchildren, great grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same.

### **What about partnerships, limited liability companies, and corporations?**

If the employer is a partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree by blood or marriage, then related employee means any employee related to any such partner, member, or shareholder within the third degree by blood or marriage.

### **Can coverage be dropped?**

If an agricultural operation subject to the Act no longer employs 10 or more unrelated, full-time employees, coverage must continue in effect during the remainder of that calendar year and for the next full calendar year. The employer may then elect to return to exempt status by posting a written or printed notice. The



notice must state that the employer will no longer carry workers' compensation insurance for the employees and the date coverage will end. This notice must be posted continuously in a conspicuous place at all employment locations of the employees for at least 90 days. After the 90 day posting period has passed, the employer may then cancel the workers' compensation policy. Failure to provide this notice voids an employer's attempt to return to exempt status.

### **Can coverage be provided voluntarily?**

An agricultural operation that is otherwise exempt from the Act may nevertheless elect to become subject to the Act and provide workers' compensation insurance coverage for its employees. This is done by obtaining a workers' compensation policy from an insurer licensed by the Nebraska Department of Insurance to write workers' compensation insurance in Nebraska.

An agricultural operation that has voluntarily chosen to provide workers' compensation insurance coverage for its employees may elect to return to exempt status by posting a written or printed notice. The notice must state that the employer will no longer carry workers' compensation insurance for the employees and the date coverage will end. This notice must be posted continuously in a conspicuous place at all employment locations of the employees for at least 90 days. After the 90 day posting period has passed, the employer may then cancel the workers' compensation policy. Failure to provide this notice voids an employer's attempt to return to exempt status.

### **Must employees be notified?**

In addition to the notice requirements for terminating coverage, every employer who is exempt under the Act and does not voluntarily elect to provide workers' compensation insurance coverage must give **all** employees the following written notice at the time of hiring: In this employment you will not be covered by the Nebraska Workers' Compensation Act and you will not be compensated under the act if you are injured on the job or suffer an occupational disease. You should plan accordingly. Failure to provide this notice subjects an employer to liability and inclusion in the Act for all unrelated employees.

### **What are the penalties for failure to provide coverage?**

Penalties for failing to obtain workers' compensation insurance coverage when required include 1) a civil fine of up to \$1,000.00 for each violation, with each day of continued failure to obtain coverage constituting a separate violation, and 2) criminal misdemeanor penalties of imprisonment for not more than one year, a \$1,000.00 fine, or both. The employer may also be enjoined from doing business in Nebraska until coverage is obtained.

**This information has been prepared by the Nebraska Workers' Compensation Court to answer some general questions concerning the application of the Nebraska Workers' Compensation Act to agricultural operations. Further inquiries may be directed to:**

**Nebraska Workers' Compensation Court  
P.O. Box 98908  
Lincoln, NE 68509-8908**

**800-599-5155 or 402-471-6468**

**<http://www.nol.org/workcomp/>**

Instructions:

- [illegible]

## Vocational rehabilitation plan review process under discussion

**L**egislative Bill 198, which is currently before the Nebraska Legislature, includes a clarification of the role of the court's vocational rehabilitation specialists in evaluating and approving vocational rehabilitation plans. This is also the subject of interim study resolution LR 177.

To provide a further forum for discussion, the court and the Nebraska Chapter of the International Association of Rehabilitation Professionals (NE IARPS) have planned a series of informal meetings between counselors and court staff to discuss any issues of concern to the counselors and how the needs of the court can be met in the least burdensome way.

Two meetings have been held to date, with a third session scheduled for December 19, 2003. Discussion topics have been proposed and prioritized, and progress has been made toward clarifying

requirements regarding vocational testing and study plans for formal training. All interested vocational rehabilitation counselors are invited and encouraged to attend future discussions. Membership in NE IARPS is not required.

Additional information can be obtained from Nicki McDevitt-Walter, Vocational Rehabilitation Specialist, at 402-471-3604 or Patricia Reilly, NE IARPS President, at 402-861-9564.

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## Income and mileage benefits to increase

**E**ffective January 1, 2004, the **maximum weekly income benefit** under the Nebraska Workers' Compensation Act will increase to \$562.00. This amount applies to work-related injuries and illnesses occurring on or after January 1, 2004. This amount equals 100 percent of the state average weekly wage as determined by the Nebraska Workers' Compensation Court. The maximum is set according to a statutory formula.

The previous maximum weekly income benefit levels will continue to apply to work-related injuries and illnesses occurring during their effective dates.

The minimum weekly income benefit remains at \$49.00.

Effective January 1, 2004, the **mileage reimbursement rate** will increase to 37.5¢ per mile for travel to seek medical treatment or while participating in a vocational rehabilitation plan. This conforms to the reimbursement rate paid to State of Nebraska employees.

For more information, please call the court's toll-free information line at 800-599-5155 or 402-471-6468. The court's Web site (<http://www.nol.org/workcomp/>) also contains information regarding the court's operations.

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## Schedule of Medical and Hospital Fees to be revised

**T**he Nebraska Workers' Compensation Court is considering revisions to its Schedule of Medical and Hospital Fees. It is anticipated the schedule will be updated to include 2004 CPT codes and 2004 RBRVS relative value units. Written comments and suggestions can be sent to Kris Peterson, Coverage and Claims Manager, or emailed to [krisp@wcc.state.ne.us](mailto:krisp@wcc.state.ne.us). The current Schedule of Medical and Hospital Fees (effective June 15, 2002) may be ordered online from Ingenix Publishing ([http://www.ingenixonline.com/modules/catalog/catalog\\_product.asp?ProductID=15993&CategoryID=](http://www.ingenixonline.com/modules/catalog/catalog_product.asp?ProductID=15993&CategoryID=)), or by calling 1-800-765-6023.

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## EDI production reaches 99.9% for first reports and 67.4% for subsequent reports

**T**he Nebraska Workers' Compensation Court's Electronic Data Interchange (EDI) reporting initiative allows employers, insurers, and others to file certain forms with the court in an electronic format as opposed to sending these forms through the mail. At the time of publication, 99.9 percent of all first reports and 67.4 percent of all subsequent reports are filed electronically using EDI. In conjunction with electronic subsequent report processing, the court has recently implemented a new "claims" oriented data/processing design that facilitates managing the electronic processing of these reports. The court, using the development and hosting services of the state government Information Management Services (IMServices) agency, implemented its first secured internet application which allows Claims Administrators access to injury reported information. This assists the insurance companies and third party administrators with properly filing injury information.

For more information on the court's EDI project, please visit our Web site's EDI page (<http://www.nol.org/workcomp/edi/edi.htm>). This page has a link from which visitors can subscribe to receive automatic email notice of upcoming advisory updates.

# Legislative interim study resolutions

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study shall include, but not be limited to, matters raised by LB 196 and LB 631, introduced in 2003. (Vrtiska)

## LR 158

**PURPOSE:** To study the Nebraska Workers' Compensation Act. The study shall examine the possibility of creating a workers' compensation uninsured employer fund to benefit workers who would be entitled to workers' compensation benefits if injured at work. (Connealy)

## LR 177

**PURPOSE:** To study the role of the vocational rehabilitation specialists of the Nebraska Workers' Compensation Court in overseeing private vocational rehabilitation counselors providing services under the Nebraska Workers' Compensation Act, and in particular the role of such specialists in evaluating

and approving vocational rehabilitation plans. (Vrtiska)

## LR 178

**PURPOSE:** To study the state's laws regarding immigration and employment of noncitizens. The study shall include the practice of Nebraska employers using Form 1099 contract labor and how it affects state revenues, worker safety, and workers' rights. In particular, the study

will focus on how workers act as contractors while performing all external elements of being employees. The effects of such employment on the state's workers' compensation, unemployment insurance, and tax systems shall be included, as well as whether this process allows loopholes in the law to be used to escape tax, workers' compensation, and unemployment payments. (Connealy, Synowiecki, Combs)

## Notice regarding objections to vocational rehabilitation counselor appointment

Requests for appointment of a vocational rehabilitation counselor are typically filed with the court's Vocational Rehabilitation section, rather than as a formal court pleading. Objections to any such administrative request should also be filed directly with the Vocational Rehabilitation section, in letter format, and not as a pleading with the Clerk of the Court.

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Bulletin



Nebraska Workers' Compensation Court  
State Capitol Building, Lincoln, NE 68509  
800-599-5155 or 402-471-6468  
<http://www.nol.org/workcomp/>

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